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4 KEVIN A. GEARHART,
5 Petitioner,
6 v.
7 JOSIE GASTELO,
8 Respondent.
9

10 Case No. [18-cv-06017-WHO](#) (PR)
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13 **ORDER REOPENING ACTION;**
14 **ORDER DISMISSING PETITION**
15 **WITH LEAVE TO AMEND**

16 This federal habeas action was stayed at petitioner Gearhart's request so that he
17 could exhaust claims in state court. (Dkt. No. 18.) Gearhart now moves to reopen and has
18 filed a first amended petition. (Dkt. No. 20.) Accordingly, the stay is DISSOLVED and
19 the action is REOPENED. The Clerk shall modify the docket to reflect this.

20 The first amended petition cannot proceed as is. It states without elaboration what
21 claims he wants to pursue and it does not appear on this Court's form. A federal habeas
22 petition must state claims for relief and provide specific facts in support of each claim.
23 Accordingly, the first amended petition is DISMISSED with leave to file an amended
24 petition on this Court's form on or before **November 16, 2020**. The amended petition
25 must include the caption and civil case number used in this order (18-06017 WHO (PR))
26 and the words SECOND AMENDED PETITION on the first page. Because an amended
27 petition completely replaces the previous petitions, Gearhart must include in his second
28 amended petition all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d
1258, 1262 (9th Cir. 1992). He may not incorporate material from a prior petition by
reference. Failure to file an amended petition on this Court's form by November 16, 2020
will result in the dismissal of this action under Federal Rule of Civil Procedure 41(b) for

failure to prosecute.

The Clerk shall amend the docket to reflect that Josie Gastelo, the warden of the prison in which petitioner is housed, is the sole respondent in this action. Petitioner also named Rosemary Ndooh as a respondent in addition to Gastelo. Gastelo, not Ndooh, is the sole proper respondent here, as she is the custodian having day-to-day control over petitioner, the only person who can produce “the body” of the petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)). The Clerk shall terminate Ndooh as a respondent.

IT IS SO ORDERED.

Dated: September 30, 2020


WILLIAM H. ORRICK
United States District Judge

WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California